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March 16, 2010

VIA E-FILING

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423

RE: STB Finance Docket No. 35305, *Arkansas Electric Power Cooperative Corporation – Petition for a Declaratory Order*

Dear Ms. Brown:

Enclosed for e-filing in the above-captioned case please find the Opening Statement of The National Coal Transportation Association ("NCTA"). NCTA is e-filing both a Confidential and Public Version of its Opening Statement. Confidential Information is redacted from the Public Version and is denoted with brackets { } in the Confidential Version. Pursuant to the Board's e-filing procedures NCTA is filing the Confidential version under seal.

Please feel free to contact me if you have any questions.

Very truly yours,

Thomas W. Wilcox

Thomas W. Wilcox
Counsel for National Coal Transportation Association

Enclosures
cc: Counsel, Parties of Record

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35305

ARKANSAS ELECTRIC POWER COOPERATIVE CORPORATION - PETITION FOR A DECLARATORY ORDER

OPENING STATEMENT OF THE NATIONAL COAL TRANSPORTATION ASSOCIATION

Pursuant to the procedural schedule issued in this proceeding on December 1, 2009, the National Coal Transportation Association ("NCTA") hereby submits its Opening Statement. As explained in more detail below, NCTA and its members have been intimately involved in the coal and utility industry discussions and analysis that began in the Fall of 2005 concerning railroad ballast fouling due to coal dust lost from loaded railcars in transit and other factors. These discussions and analyses have included assessing proposals by primarily the BNSF Railway ("BNSF") to reduce ballast fouling by supplementing or replacing the long-established practice of regular maintenance by BNSF and other coal hauling railroads of their rights-of-way with new, railroad-imposed restrictions on the amount of coal that is lost from coal rail cars in transit. Such a standard was eventually inserted by BNSF in BNSF Tariff 6041-B, Items 100 and 101, the lawfulness of which standard petitioner Arkansas Electric Power Cooperative Corporation ("AECC") has challenged in this proceeding.

NCTA's participation in the efforts to address the numerous issues presented by BNSF's proposals to control the loss of coal from rail cars culminated in the commissioning by NCTA of a formal study by Exponent, Inc., an independent third party railroad engineering consulting firm. As explained in more detail in this Opening Statement, the Exponent study, denominated the Railcar Coal Loss and Suppressant Effectiveness ("RCSLE") study, was submitted to NCTA on August 3, 2009, and it narrowly focused on two discrete aspects of the overall fouled ballast/coal dust issue: (1) scientifically evaluating the effectiveness of several methods and/or products to reduce or eliminate coal dust emissions from the top of loaded railcars; and (2) evaluating the coal dust monitoring methods proposed by BNSF to support its proposed "IDV.2"[1] performance standard for controlling coal dust loss from loaded railcars first announced by BNSF in September, 2006 and then more formally proposed by BNSF in November, 2007, and eventually included in Tariff 6041-B.

This Opening Statement describes the background, purpose and scope, and conclusions of RCLSE, portions of which are attached hereto as Exhibit 1. The narrow focus of the RCLSE study was the result of choices made by NCTA and its members to work within budgetary and organizational constraints and to contribute toward an industry solution to the issues raised by BNSF's proposals. Significantly, such choices were in no way a concession or conclusion on the part of NCTA that it is necessary or appropriate for BNSF, UP or any other railroad to replace the current means of reducing the fouling of ballast through regular track maintenance and track construction, or that the

[1] BNSF's performance standard entails an "Integrated Dust Value" or "IDV," which is a term and unit of measurement developed by BNSF. The initial version of IDV was proposed by BNSF in 2006, but was revised and re-proposed as "IDV.2" in September, 2007.

performance standard contained in BNSF Tariff 6041-B, Items 100 and 101 is reasonable under the Board's rules and applicable law.

I. DESCRIPTION AND INTEREST OF NCTA

NCTA is a non-profit association based in Denver, Colorado of over 140 members consisting of producers and consumers of coal produced in North America and other entities which are interested in coal's transportation and related issues. Over half of NCTA's members are direct consumers of coal, and NCTA's members also include some of the largest North American coal mining companies. Relevant to the present proceeding, NCTA's members collectively produce and ship hundreds of millions of tons of coal from the Powder River Basin in Wyoming ("PRB") each year. Other NCTA members include railcar equipment and parts manufacturers, service providers, and energy industry experts. Entities and their affiliates whose primary business is providing transportation of coal by rail, barge, truck, pipeline slurry, or any other mode are not eligible for membership in NCTA, but such companies are an integral part of the NCTA and their participation is the cornerstone of success in NCTA's committee efforts.

NCTA views its role in the coal industry as providing education and as a facilitator of the resolution of coal transportation issues in order to serve the needs of the general public, industry, and all modes of transportation. This is accomplished through the sponsoring of educational forums, and providing opportunities for the lawful exchange of ideas and knowledge with all elements of the coal production, transportation, and consumption infrastructure. In addition to holding general annual conferences, NCTA has three ongoing active committees made up of NCTA members and non-member transportation companies: The Eastern and Western Logistics & Planning

Committees and the Operations & Maintenance Subcommittee. These committees work throughout the year to address various industry issues, which in recent years have included the ballast fouling and coal dust mitigation issues being addressed in this proceeding.

II. NCTA'S PARTICIPATION IN THE BALLAST FOULING/COAL DUST DEBATE

A. Overview and Genesis of Participation

NCTA became involved in the fouled rail ballast/coal dust debate shortly after the derailments that occurred on segments of the PRB Joint Line in May of 2005. At that time, BNSF announced to NCTA's member utilities and BNSF's other customers that the derailments and resulting service failures were due to the inability of the rail ballast underlying the Joint Line to properly drain large amounts of precipitation due to the fouling of rail ballast by coal dust accumulating from passing rail cars over time. In the summer of 2005, NCTA's Western Rapid Response Team, a group of NCTA members formed in 1996 to work with railroads and rail shippers to manage service dislocations after the UP/SP merger, re-activated for the purpose of interfacing with the BNSF and UP to address the severe dislocations of service that resulted from the 2005 derailments and to restore some fluidity to the PRB coal transportation system. Concurrently, BNSF, in addition to performing increased maintenance, ballast undercutting and track construction along the Joint Line, began to explore the alternative of addressing its ballast fouling problems by reducing the amount of coal lost from loaded rail cars in transit using chemical dust suppressants. In a presentation to NCTA at its annual Fall conference in September, 2005, BNSF provided a status report of its efforts to address the fouled ballast

on the Joint Line and its analysis of the role in coal dust accumulation in ballast fouling. In the course of this presentation, BNSF claimed that between 225 and 250 pounds of coal were being lost per railcar and that applying coal dust suppressants to the tops of railcars would reduce such losses significantly. The BNSF's presentation prompted the efforts of NCTA and others discussed below, and the eventual production of the RCLSE.

B. The Railcar Coal Loss and Suppressant Effectiveness Study

1. Background

Shortly after BNSF's presentation at the annual NCTA Fall 2005 conference, NCTA sought to take a leading role in the formation of an industry-formulated, economical and efficient solution to the fouled ballast issues raised by the May 2005 derailments and BNSF's subsequent representations about the role of coal from rail cars in those incidents. Accordingly, NCTA formed, in conjunction with BNSF, a Ballast Fouling Mitigation Committee that had three working subcommittees: Spraying Effectiveness, Load Profiling, and Rail Car Quality. Among the many issues to be considered included the relative costs and benefits of altering the historical means of controlling ballast fouling through regular track maintenance by seeking to control it through measures to reduce the amount of coal that came out of coal cars, even though coal dust is only one contributing factor to railroad ballast fouling.

The process of BNSF and other stakeholders jointly analyzing the costs and benefits of various means to address ballast fouling and attempting to reach a negotiated solution among all the coal transportation industry stakeholders was cut short, however, by BNSF in September, 2006. At that time BNSF terminated its participation as well as its data exchange with NCTA and its members, and announced its intention to introduce a

performance standard that required 85% of fugitive coal dust from coal cars to be eliminated through chemical spraying on the tops of 100% of all loaded railcars.

The possible implementation of a dust control performance standard by BNSF raised numerous questions among NCTA's members about the validity and science behind the standard and how such a standard could be enforced. Moreover, general estimates of the total cost of requiring PRB coal cars to be sprayed with chemical suppressants ranged from $50 million to $150 million annually or higher. Additionally, assuming for the sake of argument that chemical suppressants effectively controlled coal losses from rail cars in transit, the benefits associated with the costs of such controls would flow almost entirely to the coal-hauling railroad imposing such a standard, since it would be relieved of the cost of maintaining its tracks, and would also enjoy increased overall productivity due less frequent track outages. These issues, coupled with the lack of open communication and data sharing between BNSF and industry stakeholders after September, 2006, led the NCTA Board of Directors to decide to commission an independent, scientific study on the ballast fouling mitigation issue. In March of 2007, after seeking proposals from several engineering and consulting firms, NCTA selected Exponent to design and conduct a "Ballast Fouling Mitigation Study" around four specified goals: (1) gaining a better understanding of the mechanisms that cause rail car coal losses and determine the average quantity of coal lost from each car and how the loss occurred; (2) determine the cost and feasibility of various coal loss control measures; (3) estimate the cause and effect of how coal lost from rail cars fouls the ballast/subgrade of the road bed and changes track maintenance frequency and cost; and (4) recommend the most cost effective solution to further reduce or eliminate ballast fouling due to coal and

resultant track maintenance. Since NCTA as an organization does not maintain reserves for studies or projects of this magnitude, the funding for the Ballast Fouling Mitigation Study was supplied to NCTA by a group of NCTA members, denominated the study Steering Committee.

In November, 2007, while NCTA and Exponent were formulating the parameters of the study, BNSF announced its Performance Standard for coal dust suppression from rail cars. The BNSF standard required all coal cars to meet an "Integrated Dust Value Version 2" ("IDV.2") of 300, as determined using various instruments installed by BNSF at various locations along the Joint Line (denominated track side monitors, or TSMs) for the purpose of measuring the amount of coal dust emitted from a passing train. According to BNSF, the IDV.2 300 standard was necessary to achieve 85-95% reduction in coal dust levels from passing trains. The TSMs installed by BNSF to determine the IDV.2 levels of passing unit coal trains were comprised of a system of passive dust collectors (dust fall jars); a weather station, real time aerosol monitors ("RAMS") manufactured by Met-One; and devices to detect and identify the train being analyzed. While BNSF admitted that its TSMs could not measure the absolute dust level for a given coal train, BNSF represented that the TSM's could identify dust values below or in excess of a predetermined threshold. BNSF did not propose a specific manner or method by which its proposed standard could be reached, nor did BNSF propose any alternative means to reduce ballast fouling. BNSF eventually formally adopted an IDV.2 standard of 300 in BNSF Tariff 6041-B, Item 100 for coal trains traversing the Joint Line from the PRB at its Milepost 90 location on the Joint Line. On May 29, 2009, BNSF announced that a second TSM was installed at Milepost 558.2 on the BNSF Black Hills subdivision

of the Joint Line, and stated that the IDV.2 level of shippers' trains passing this location should not exceed a level of 245 IDV.2 units. This standard is included in BNSF Tariff 6041-B at Item 101. Because the TSM's cannot measure absolute dust levels, the IDV.2 level is set at a different level at each location based on a statistical analysis.

2. Study Scope and Assumptions

The deliberations of Exponent, NCTA, and the study Steering Committee, combined with NCTA's study funding parameters and BNSF's November, 2007 announcement, led to a decision by NCTA in the winter of 2007-08 to focus the work of Exponent to two primary tasks: (1) scientifically evaluating the effectiveness of several methods and/or products to reduce or eliminate coal dust emissions from the top of loaded railcars; and (2) evaluating the coal dust monitoring methods proposed by BNSF to measure compliance with its proposed Performance Standard. As summarized in the Executive Summary to the final RCLSE, "the primary focus of the Railcar Coal Loss and Suppressant Effectiveness ("RCLSE") Study . . . is to scientifically evaluate the efficacy of using certain methods and/or products to reduce or potentially eliminate fugitive coal dust emissions from the top of loaded railcars (based on monitoring techniques already in use on the "Joint Line" in the Powder River Basin, Wyoming)."[2] In focusing the scope of the study on these narrow issues, NCTA and the Study Steering Committee expressly did not address the overall question of the extent to which railroad ballast fouling can be attributed solely to coal dust emitted from railcars, as opposed to other factors such as sand, dirt, vegetation, and other wind-borne factors. NCTA also elected to not specifically address the overall issue of whether controlling coal dust emissions from

[2] RCLSE Executive Summary at vii (See Exhibit 1).

railcars is appropriate under historical and current coal and railroad industry standards and stakeholder expectations, specifically that the rates paid by coal shippers and operational parameters of coal rail movements contemplate ballast fouling to be controlled or prevented by the railroad through periodic track maintenance. The election by NCTA to not expend its limited funds and resources to study these and other important issues related to the ballast fouling issue and BNSF's proposed coal dust control standard should not be interpreted by the Board to mean NCTA does not believe they are important, or more significantly, that NCTA as an organization agrees that controlling coal dust emissions from rail cars using chemical spraying is the sole means to reduce ballast fouling. Indeed, as summarized below, the final RCLSE raises several issues to be considered in determining the viability and feasibility of approaches that would seek to reduce ballast fouling by solely reducing the amount of coal dust that is lost from loaded coal trains moving on the BNSF's and UP's system.

3. RCLSE Study Process and Results

The actual RCLSE data collection and analysis took place over the last ten months of 2008, and consisted of two phases – controlled environment field testing ("CEFT") of top loss (also called "static testing") of various dust suppressant products, and controlled over the road field testing ("OTRFT"), which entailed running a number of unit trains over the Joint Line past the TMS's installed by BNSF at Milepost 90 treated with the various suppressants. In each case, the study sought to test the effectiveness of the suppressants using the monitoring and analysis methods established by BNSF on the Joint Line to measure compliance with its "IDV.2" standard. Due to budget constraints and other factors, the CEFT testing and data collection was performed by Exponent under

its contract with NCTA, while responsibility for field aspects and data collection activities associated with the OTRFT was assumed by NCTA member Peabody/Powder River Coal. Accordingly, the field monitoring and data acquisition for the OTRFT took place at Peabody's North Antelope Rochelle Mine ("NARM"). Peabody coordinated with BNSF to schedule the approximately 100 loaded unit trains that were tested and analyzed.[3] Additionally, the raw data related to the OTRFT was collected and processed in the first instance by BNSF contractors Simpson Weather Associates ("SWA") and Conestoga Associates, which in turn submitted summaries of the data and analysis of the data to Exponent for inclusion into the RCLSE.

4. Study Conclusions and Relevance to this Proceeding

NCTA believes that the RCLSE, although necessarily limited in scope, nevertheless contains results and conclusions that bear on the issues in this proceeding, namely (1) the effectiveness of chemical dust suppressants to attempt to reduce ballast fouling by reducing the amount of coal that is lost in transit from the tops of rail cars; and (2) the reliability of the means by which BNSF has chosen to measure compliance with its proposed "IDV.2" performance standard in Tariff 6041-B. As to the former, the RCLSE concluded that {

} Exponent further concluded that {

[3] While the initial open communication from BNSF to NCTA ceased in late 2006, BNSF nevertheless cooperated with Exponent, Peabody Energy and NCTA during the OTRFT portion of the study.

}

As for the RCLSE's and Exponent's review and critique of the methods used to measure fugitive coal dust using the MetOne E-Samplers proposed for use by BNSF to determine compliance with its IDV.2 standard, and the IDV standard in general, the study outlines numerous concerns and questions, some of which are summarized below[4]:

1. {

}

2. {

}

3. {

[4] The RCLSE's Summary of Findings is also included in Exhibit 1.

}

4. {

}

5. {

}

6. {

}

7. {

}

IIII. CONCLUSION

In conclusion, since the May 2005 derailments in the PRB, NCTA has sought to play an active role in the development of a coal industry solution to the issues raised by BNSF's proposals to reduce ballast fouling on the Joint Line and other tracks where coal trains are transported by imposing a standard that requires coal losses from railcars to be substantially eliminated – ostensibly through chemical spraying. Unfortunately, such a solution could not be developed by coal transportation industry stakeholders, which failure NCTA believes has ultimately caused these issues to come before this Board. The RCLSE, while limited in scope, nevertheless provides useful information to the STB about both (1) the ability of chemical suppressants to actually control the loss of coal from coal cars in transit; and (2) certain issues and deficiencies with the means by which BNSF would enforce compliance with the standards in Tariff 6041-B, Items 100 and 101 identified by Exponent during the course of its preparation of the RCLSE.

NATIONAL COAL TRANSPORTATION ASSOCIATION

By: _____

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Counsel for the National Coal Transportation Association

Dated: March 16, 2010

EXHIBIT 1
To
Opening Statement Of
The National Coal Transportation Association

REDACTED

CERTIFICATE OF SERVICE

I do hereby certify that on March 16, 2010, I have served a true and correct copy of the foregoing Opening Statement of The National Coal Transportation Association, to all Parties of Record on the Service List published by the Board for this proceeding via email and/or United States mail, first class postage prepaid.

Thomas W. Wilcox